



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 22, 2023

By ECF

Honorable Ona T. Wang
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

MEMO ENDORSED.

Re: *2741 Brothers Deli Grocery Inc., et al. v. U.S. Dep't of Agriculture, Food and Nutrition Service*, No. 22-cv-9317-OTW

Dear Judge Wang:

This Office represents the U.S. Department of Agriculture, Food and Nutrition Service (“USDA” or “government”), in the above-referenced action in which Plaintiffs seek review of a permanent disqualification from participating in the Supplemental Nutrition Assistance Program.

Consistent with the Protective Order entered by the Court on August 3, 2023 (ECF No. 12), and pursuant to Rule IV of this Court’s Individual Rules, the Government respectfully seeks leave to file a redacted version of the certified administrative record on the public docket in this case. The administrative record contains information regarding electronic benefits transfer (“EBT”) card recipients and stores participating in the SNAP; this sensitive, personal, and commercial information is covered by the Privacy Act, 5 U.S.C. § 552a(b), The Food and Nutrition Act of 2008, 7 U.S.C. § 2020(e)(8), and the federal regulations promulgated thereunder, 7 C.F.R. § 272.1(c) (collectively “the Acts”). The information includes Food and Nutrition Service (“FNS”) numbers, EBT card numbers, household numbers, and other confidential, personal, or similar information.

The Government respectfully submits that sealing is appropriate notwithstanding the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006) and *Bernstein v. Bernstein Litowitz Berger & Grossman*, 814 F.3d 132 (2d Cir. 2016), in light of the privacy interests of third parties. *See, e.g., Beverly Hills Teddy Bear Co. v. Best Brands Consumer Prod., Inc.*, No. 19 Civ. 3766 (GHW), 2020 WL 7706741, at *2 (S.D.N.Y. Dec. 29, 2020) (“Higher values that may justify the sealing of documents include . . . the privacy interests of third-parties” (citing *E.E.O.C. v. Kelley Drye & Warren LLP*, No. 10 Civ. 655 (LTS) (MHD), 2012 WL 691545, at *2 (S.D.N.Y. Mar. 2, 2012))); *Republic of Turkey v. Christie’s Inc.*, No. 17 Civ. 3086 (AJN), 2020 WL 7338074, at *1 (S.D.N.Y. Sept. 11, 2020) (“Specifically, for the redacted portions, the parties’ and third parties’ privacy interests outweigh the ‘value of such information to those monitoring the federal courts.’”). In similar SNAP disqualification cases in this district, courts have permitted the Government to submit a redacted version of the administrative record in support of a motion for summary judgment. *See,*

e.g., Notice of Certified Administrative Record, *La Reyna De Westchester Deli Grocery Corp. v. United States*, 22 Civ. 01242 (KHP), ECF. No. 29; Notice of Certified Administrative Record, *East Village New Deli Corp. v. United States*, 20 Civ. 7356 (PAE), ECF No. 30. The Government requests leave to do the same in this case. Plaintiffs consent to this sealing request.

I thank the Court for consideration of this submission.

Respectfully,

DAMIAN WILLIAMS
United States Attorney

BY: /s/ Leslie A. Ramirez-Fisher
LESLIE A. RAMIREZ-FISHER
Assistant U.S. Attorney
Telephone: (212) 637-0378
Email: leslie.ramirez-fisher@usdoj.gov

cc: Joseph A. Bahgat, Counsel for Plaintiffs (by ECF)

Application **GRANTED**.

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'Ona T. Wang', with a large, stylized loop at the end.

Ona T. Wang 1/3/24
U.S.M.J.